

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Federal-State Joint Board on	)	
Universal Service	)	CC Docket No. 96-45
	)	
Supplemented Petitions for Eligible	)	
Telecommunications Carrier Designations	)	
In Non-Rural Areas	)	

**Comments of  
Communications Workers of America**

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## I. INTRODUCTION

The Communications Workers of America (CWA) submits these comments in response to the Commission's *Public Notice* of April 12, 2004 inviting parties to update the record pertaining to pending petitions for designation as eligible telecommunications carriers (ETCs) in non-rural study areas.<sup>1</sup> The Commission invited parties to update the record in response to the framework established in *Virginia Cellular* and *Highland Cellular* that granted in part and denied in part the respective petitions for designation as an ETC in rural and non-rural study areas.<sup>2</sup> The Commission sought comment from interested parties in response to the supplements to the petitions.

CWA represents more than 700,000 employees who have an interest in these proceedings as consumers, workers, and citizens. Many CWA members reside in rural areas and benefit from quality, affordable telephone service supported through the universal service fund. CWA represents more than 300,000 employees in the telecommunications industry, many of who are employed by rural and non-rural incumbent local exchange carriers (ILECs) that receive support from the universal service fund. CWA represents employees at both Sprint and ALLTEL wireline operations in many states. Finally, CWA has a long history of support for public policies that foster universal, affordable, quality telephone service to all Americans and as such has a keen interest in the continued viability of the fund.

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<sup>1</sup> FCC Public Notice, *Parties are Invited to Update the Record Pertaining to Pending Petitions for Eligible Telecommunications Carrier Designations*, CC Docket No. 96-45, DA 04-999 (April 12, 2004) ("*Public Notice*").

<sup>2</sup> *Federal-State Joint Board on Universal Service, Virginia Cellular Order, LLC Petition for Designation as an Eligible Telecommunications Carrier for the Commonwealth of Virginia*, CC Docket No. 96-45, Memorandum Opinion and Order, FCC 03-338 (rel. Jan. 22, 2004) ("*Virginia Cellular*"); *Federal-State Joint Board on Universal Service, Highland Cellular, Inc. Petition for Designation as an Eligible Telecommunications Carrier for the Commonwealth of Virginia*, CC Docket No. 96-45, Memorandum Opinion and Order, FCC 04-37, April 12, 2004(rel.) ("*Highland Cellular*").

CWA limits its comments to the petitions submitted by Sprint and ALLTEL for designation as ETCs in study areas served by non-rural incumbent local exchange carriers (“ILEC”).<sup>3</sup> Sprint requests designation as an ETC in eight states: Alabama, Florida, Georgia, New York, North Carolina, Pennsylvania, Tennessee, and Virginia.<sup>4</sup> ALLTEL requests designation as an ETC in five states: Alabama, Florida, Georgia, North Carolina, and Tennessee.<sup>5</sup>

CWA urges the Commission to reject the Sprint and ALLTEL Petitions for designation as ETCs in study areas served by non-rural ILECs. First, designation of ETC status in these states would undermine the viability of the universal service fund. Second, Sprint and ALLTEL’s commitment to provide quality service in supported study areas is insufficient given their record of poor service quality in their respective wireline operations. Third, Sprint and ALLTEL have made inadequate service provisioning commitments and do not provide specific construction plans to indicate that the companies will build-out capacity to underserved customers. The companies do not commit to provide service to those who are currently without access to wireline telephony. Because ALLTEL’s and Sprint’s petitions do not serve the public interest, the Commission should deny their request for ETC status.

## **II. DESIGNATION OF ETC STATUS IN THESE STATES WOULD UNDERMINE THE VIABILITY OF THE UNIVERSAL SERVICE FUND**

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<sup>3</sup> CWA does not comment on the petitions submitted by other companies referenced in the April 12, 2004 *Public Notice*. Sprint and ALLTEL are the only parties requesting ETC designation in multiple states. CWA silence on the other petitions does not indicate support or opposition to these petitions at this time. Some of the issues raised in these comments may or may not be relevant to the petitions of the other parties.

<sup>4</sup> *In the Matter of Federal-State Joint Board on Universal Service*, Sprint Corporation Supplemental Filing, CC Docket No. 96-45, May 14, 2004 (“Sprint Supplemental Filing”).

<sup>5</sup> *In the Matter of Federal-State Joint Board on Universal Service*, Reply Comments of ALLTEL Communications, Inc., CC Docket No. 96-45, DA 03-1881, 04-998, DA 03-1882, 04-998, DA 03-3824, 04-998, DA 03-3825, 04-998, DA 04-998, May 14, 2004 (“ALLTEL Reply Comments”).

The Commission has expressed concern about the impact on the universal service fund due to the rapid growth in high-cost support distributed to competitive ETCs.<sup>6</sup> In first quarter 2004, ETCs are projected to receive 9.4 percent of the total high-cost support provided to carriers in study areas of non-rural ILECs, or a total of \$19.1 million. This is almost double the 5 percent share, or \$10.1 million, that competitive ETCs received in high-cost support in study areas of non-rural ILECs in fourth quarter 2002. On an annualized basis, competitive ETCs are projected to receive \$76.4 million this year.<sup>7</sup> In fourth quarter 2002, there were 15 ETCs eligible for high-cost support in rural and non-rural areas. By first quarter 2004, the number had almost quadrupled to 57.<sup>8</sup>

Moreover, the interstate access support that the Commission established in the *CALLS Order* specifically designed to make explicit the universal service subsidies to non-rural ILECs is capped at \$650 million per year.<sup>9</sup> Therefore, as ETCs capture more of this funding, *CALLS* interstate access support to the non-rural ILECs will inevitably decline.<sup>10</sup>

The purpose of high-cost support is to assure that rural telephone rates are affordable, despite the high-cost of service in rural areas. Universal service funding subsidies are necessary to keep rural rates affordable. As competitive ETCs capture a growing percentage of the fund, the subsidy necessary to maintain a universal network will be insufficient. Only ILECs have

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<sup>6</sup> See *Virginia Cellular Order*, ¶ 31. See also *Highland Cellular Order*, ¶ 25.

<sup>7</sup> First quarter 2004 projection of support x 4 quarters

<sup>8</sup> CWA Calculation from Universal Service Administrative Company (USAC), Federal Universal Service Support Mechanisms Fund Size for Fourth Quarter 2002 and for First Quarter 2004, Appendix HC01. Available at <http://www.universalservice.org/overview/filings/2004/Q1>. See Appendix A.

<sup>9</sup> *Access Charge Reform*, Sixth Report and Order, 15 FCC Rcd 12962 (2000) (“*CALLS Order*”).

<sup>10</sup> The term “non-rural ILEC” can be misleading. “Non-rural ILECs” are large ILECs that serve non-rural and rural portions of a state. The entire state is considered the study area. The “non-rural ILECs” receive high-cost support to subsidize the high-costs to serve rural areas in their respective states. Because costs for “non-rural ILECs” are averaged across the state, in many states ILECs do not receive high-cost support, even when they serve rural areas.

carrier of last resort obligations. Competitive ETCs can refuse to serve requesting customers for whom the carrier determines the cost of network build-out is prohibitive. Sprint acknowledges that it will not serve all requesting customers. “Sprint anticipates that it will *rarely* deny a service request.” “Sprint anticipates being able to provide service to *almost all* requesting customers in the ETC Service Areas upon request.” (emphasis added).<sup>11</sup> Moreover, ETCs that receive universal service support can subsequently withdraw from providing service in a study area; ILECs cannot. ILECs bear other regulatory costs and obligations that are not imposed on wireless carriers. In sum, as ETCs capture a larger and larger share of universal service support, ILECs with carrier of last resort obligations will be unable to receive the level of support necessary to support affordable high-quality networks and services.

With less high-cost support, non-rural and rural ILECs have three options. They can seek state Commission approval to raise rates. They can reduce capital spending and employment. Or, in the case of non-rural ILECs, they can sell-off rural high-cost wire centers. Verizon just completed the sale of its entire network in Hawaii to a venture capital firm that has no experience running a telephone company. Verizon has also announced the possible sale of more than two million lines in upstate New York. None of these three options benefit rural consumers. Yet, they are the direct result of public policy.

In the instant proceeding, Sprint requests ETC status in eight rural states and ALLTEL requests ETC designation in five states. Over time, this will seriously erode support available to ILECs with carrier of last resort obligations. As the Commission noted in *Virginia Cellular*, “(t)he value of increased competition, by itself, is not sufficient to satisfy the public interest

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<sup>11</sup> Sprint Supplemental Filing, 9 – 10.

test...”<sup>12</sup> Because designation of Sprint and ALLTEL as ETCs in these states will erode universal service support for carrier-of-last resort networks, the Commission should deny the petitions.

### **III. SPRINT AND ALLTEL HAVE POOR SERVICE QUALITY RECORDS**

In *Virginia Cellular* and *Highland Cellular*, the Commission states that “we do not believe that designation of an additional ETC in a non-rural telephone company’s study area based merely upon a showing that the requesting carrier complies with section 214(d)(1) of the Act will necessarily be consistent with the public interest in every instance.”<sup>13</sup> The Commission then provided a road map to guide a public interest analysis for ETC designation in *rural* areas. One important element in the public interest analysis is the ability of the requesting ETC to provide quality service. Section 254(b)(1) of the Telecommunications Act of 1996 (“the Act”) instructs the Joint Board and the Commission to enact universal service policies to ensure “quality services.”<sup>14</sup>

Consistent with this reasoning, the Commission must include in its public interest test for designation of ETC status in non-rural areas a showing that the requesting carrier will provide high quality service. In *Highland Cellular* and *Virginia Cellular*, the Commission concluded that the requesting carriers met this requirement in two ways. First, the carriers each made a commitment to abide by CTIA’s Code for Wireless Service, which sets out certain principles, disclosures, and practices for the provision of wireless service. Second, the Commission required the companies to report annually the number of consumer complaints and the number of

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<sup>12</sup> *Virginia Cellular*, 4.

<sup>13</sup> *Highland Cellular Order*, ¶ 21. *Virginia Cellular Order*, ¶ 27.

<sup>14</sup> 47 U.S.C. § 254(b)(1).

requesting customers denied service on both requesting carriers.<sup>15</sup> ALLTEL and Sprint have committed to these same requirements.

CWA has consistently argued that carriers that receive universal service support must meet high standards of service.<sup>16</sup> While the minimal service quality requirements imposed on Highland Cellular and Virginia Cellular may be appropriate for a carrier that has a record of quality service, these minimal requirements are insufficient in the case of Sprint and ALLTEL. Both Sprint and ALLTEL have a track record of poor quality service.

Sprint. Sprint PCS had the second worst record on customer complaints in 2003 among the major wireless carriers, according to Commission customer complaint data.<sup>17</sup>

In its wireline operations, Sprint is projected to receive approximately \$114 million in federal universal service support in 2004 in 15 states: Florida, Indiana, Kansas, Minnesota, Missouri, North Carolina, Nebraska, New Jersey, Ohio, Oregon, Pennsylvania, Tennessee, Texas, Virginia, and Wyoming.<sup>18</sup> Yet, Sprint has an abysmal record on key service quality indicators collected by the Commission. According to Commission ARMIS data, the percent of initial out-of-service trouble reports in which the problem was not resolved and showed up as a repeat-out-of-service trouble report, Sprint's overall quality declined by 50 percent among residential customers from 1999 to 2003. In some Sprint jurisdictions, the decline in service quality was even worse: North Carolina (69 percent), Tennessee (56 percent), SE Virginia (59

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<sup>15</sup> *Virginia Cellular Order*, ¶46; *Highland Cellular*, ¶43.

<sup>16</sup> Many non-rural ILECs are subject to much more stringent service quality standards Comments of the New York State Telecommunications Association, Inc., *In the Matter of Federal-State Joint Board on Universal Service NPCR, Inc. d/b/a Nextel Partners Supplement to Petition for Designation as an Eligible Telecommunications Carrier in the State of New York*, CC Docket No. 96-45, May 7, 2004, 9.

<sup>17</sup> *Telecommunications Reports Daily*, May 11, 2004.

<sup>18</sup> CWA Calculation from Universal Service Administrative Company (USAC), Federal Universal Service Support Mechanisms Fund Size for First Quarter 2004, Appendix HC01. Available at <http://www.universalservice.org/overview/filings/2004/Q1>.

percent), Minnesota (58 percent), New Jersey (79 percent), South Carolina (70 percent), Central Virginia (86 percent).<sup>19</sup>

CWA members who work at Sprint local telephone operations provide the story behind the statistics. Sprint is not investing in local maintenance. Rather than solve a problem by installing new cable or pairs, Sprint instructs outside techs to borrow lines, switch lines, and do anything they can to make a quick fix. The next time it rains, the line goes out again.

Sprint's financial reports show a story of disinvestments in its local wireline operations. Sprint's local telephone operations are the cash cow for the Corporation. In 2003, Sprint's local division earned \$1.8 billion in operating profits. The same year Sprint PCS earned \$551 million in operating profits. Sprint's local division earned more than three times the operating profits of Sprint PCS.<sup>20</sup>

Yet, Sprint's capital expenditures (cap-ex) reveal a different picture. Sprint spent twice as much in cap-ex on Sprint PCS (2.1 billion) as on its local division (\$1.2 billion).<sup>21</sup> Stated another way, Sprint PCS' capital expenditure was four times Sprint PCS' operating profits. Sprint uses profits from its regulated local division to finance build-out of its unregulated wireless network.

ALLTEL. The only ALLTEL local operation for which the Commission has historical data is ALLTEL's Nebraska operations, which ALLTEL purchased from Aliant (the former Lincoln Tel) in June 1999. CWA represents the employees at this ALLTEL location. Since ALLTEL purchased the company, ALLTEL has reduced occupational employment by 268 percent. When ALLTEL purchased the company, CWA represented 722 employees; today,

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<sup>19</sup> FCC, Armis Report 43-05, Table II. See Appendix.

<sup>20</sup> Sprint Corporation, SEC Form 10-K for the year ending Dec. 31, 2003.

<sup>21</sup> *Id.*



CWA represents 269 employees in the same operation. ALLTEL has slashed jobs, and contracted out many operations to companies that hire less-skilled employees.<sup>22</sup>

The results show up in the ARMIS service quality data. Between 1999 and 2003, residential customer complaints at ALLTEL-Nebraska skyrocketed by 426 percent. Repeat out-of-service reports as a percentage of initial out-of-service reports are up 112 percent over the same period.<sup>23</sup> CWA members at ALLTEL tell a similar story as our members at Sprint. Due to lack of investment and understaffing in its wireline operation, CWA-represented technicians all too often must make quick repairs due to lack of capital budget to invest in new plant.

ALLTEL's capital investment is focused on its wireless operations. In 2003, wireline cap-ex represented 38.5 percent of ALLTEL's wireline operating profits. The same year, wireless cap-ex represented 86.2 percent of wireless operating profits.<sup>24</sup>

ALLTEL's wireline operations are projected to receive about \$50.6 million in high-cost support in 2004 in 16 states: Alabama, Arkansas, Florida, Georgia, Illinois, Kentucky, Michigan, Missouri, Mississippi, North Carolina, New York, Ohio, Oklahoma, Pennsylvania, South Carolina, and Texas.<sup>25</sup>

CWA certainly recognizes that consolidated corporations use cash flow from one line of business to invest in new lines of business. That is not the issue here. Sprint and ALLTEL collect large public subsidies to support regulated wireline operations, yet they allow these rural wireline telephone operations where customers have little choice to deteriorate, slashing capital

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<sup>22</sup> CWA membership reports, June 1999 and April 2004.

<sup>23</sup> FCC, Armis Report 43-05, Table II and Table V. See Appendix.

<sup>24</sup> ALLTEL, SEC Form 10-K for the year ending Dec. 31, 2003.

<sup>25</sup> CWA Calculation from Universal Service Administrative Company (USAC), Federal Universal Service Support Mechanisms Fund Size for First Quarter 2004, Appendix HC01. Available at <http://www.universalservice.org/overview/filings/2004/Q1>.

budgets and frontline staff. At the same time, Sprint and ALLTEL use cash flow generated by public subsidies and ratepayers in the regulated wireline business to invest in unregulated wireless operations.

Sprint and ALLTEL have demonstrated that they do not use universal service support to provide quality service to customers in their wireline operations. Based on this track record, the Commission should have little confidence in Sprint and ALLTEL's commitment to use universal service support to provide quality service.

#### **IV. SPRINT AND ALLTEL CONSTRUCTION PLANS AND SERVICE PROVISIONING COMMITMENTS ARE INADEQUATE**

In *Virginia Cellular* and *Highland Cellular*, the Commission made clear that ETC designation is contingent upon specific commitments by a requesting wireless carrier to build-out its network to serve more customers in the rural study area in which it seeks universal service support. For example, Virginia Cellular made a commitment to construct 11 cell sites over the first year and a half following ETC designation in sparsely populated areas to serve a population of 157,060.<sup>26</sup> In this instant proceeding, Smith Bagley, Inc. provides the Commission with six locations, the estimated construction costs, and the populations that would be served by the planned new facilities.<sup>27</sup>

In contrast, ALLTEL does not provide any detail on its plans to use universal service support to extend its network coverage. Sprint does not tell the Commission where it will build new cell sites and expand capacity.<sup>28</sup> The Commission therefore has no way of knowing whether Sprint will use universal service support to build-out its network to serve underserved rural

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<sup>26</sup> *Virginia Cellular Order*, ¶ 16.

<sup>27</sup> *In the Matter of Federal-State Joint Board on Universal Service, Smith Bagley, Inc. Petition for Designation as a Eligible Telecommunications Carrier for the Navajo Reservation in Utah*, CC docket No. 96-45, May 14, 2004, 8.

areas, or whether it will use the support to build more cell sites along interstate highways and in higher-density towns.

Sprint's and ALLTEL's provisioning commitments are not reassuring. Neither company commits to provide service to any requesting customer. Sprint tells the Commission "(I)n the event that Sprint cannot provide service, the Company has committed to evaluate other actions that may be necessary, *potentially including deployment of additional facilities*, to ensure that it provides service to every requesting consumer within its designated ETC Service Areas within a reasonable time frame."<sup>29</sup> (emphasis added) "Sprint *anticipates* that it will *rarely* need to deny a service request."<sup>30</sup> (emphasis added) "Accordingly, Sprint *anticipates* being able to provide service to *almost all* requesting customers in the ETC Service Areas upon request."<sup>31</sup> (emphasis added) Construction "*ultimately* will expand Sprint's wireless coverage in less densely populated portions of those areas."<sup>32</sup> (emphasis added) Sprint appears to be protecting its options to concentrate its services in higher density rural towns and along highways in the states for which it seeks ETC designation, a creamskimming practice that the Commission ruled out in *Highland Cellular*.<sup>33</sup>

Because Sprint and ALLTEL's construction plans are vague and their service provision commitments leave open the possibility of creamskimming, the Commission should not approve the Petitions.

## V. CONCLUSION

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<sup>28</sup> *Sprint Supplemental Filing*, 10.

<sup>29</sup> *Id.*, 19.

<sup>30</sup> *Id.*, 9.

<sup>31</sup> *Id.*, 10.

<sup>32</sup> *Id.*, 10.

<sup>33</sup> *Highland Cellular Order*, 31.

The Telecommunications Act of 1996 requires the Commission to determine that designation of ETC status serves the public interest in rural and non-rural areas. Designation of Sprint in the eight states it has requested and of ALLTEL in the five states it has requested as ETCs eligible for universal service support is not in the public interest. It will undermine the viability of support for ILECs' rural networks in these states that serve as carriers of last resort, obligations that ETCs do not share. Sprint's and ALLTEL's service quality records in wireline operations raise serious questions about their respective commitments to quality service. Finally, neither Sprint nor ALLTEL have provided the Commission with sufficient detail in their construction plans and service commitments to protect against creamskimming and to ensure that universal service support will be directed to upgrade the network to serve currently underserved rural communities.

Respectfully Submitted

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Dated: May 28, 2004

## CERTIFICATE OF SERVICE

This is to certify that I have duly served these comments upon these parties by  
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